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Via E-Mail – [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

November 18, 2004

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve  
20<sup>th</sup> and C Streets, N.W.  
Washington, DC 20551

Re: Comment by Epson America, Inc. to Proposed Rule Changes, Official Staff Commentary to Regulation E Docket No.: R-1210

Dear Ms. Johnson:

Epson America, Inc. (Epson) is the largest US subsidiary of Seiko Epson Corporation, a global technology company. Seiko Epson develops and manufactures, and Epson markets, hardware and software products and services for the US Payments industry. Epson has many customers in both the retail-merchant Point-of-Sale (POS) business and the branch-bank segment of the US banking industry. Epson is an active promoter and participant in ACH Electronic Check Conversion (ECC), primarily involved with deploying systems for the point-of-purchase (POP) application of ECC. Further we manufacture check imaging products that enable and encourage check truncation by imaging in remote locations for both banks and retailers.

Epson is an active corporate member of the NACHA Electronic Check Council and we support a number of customers that are currently in production using ECC (POP). We are also engaged with a number of the country's largest third-party ACH processors in actively promoting ECC to new end-users in the retail-merchant community. As such, we believe we have a highly informed and current view of the state of ECC in the market and of the attitudes of retail-merchants contemplating the adoption of ECC and other check-elimination strategies, as well as an understanding of their consumer customers as it pertains to usage and acceptance of the POP application.

Epson is pleased to provide the Federal Reserve Board with comments to those proposed changes to Regulation E that impact the acceptance and adoption of ECC.

The comments in this letter are those of Epson and do not necessarily represent the comments of any of our customers or of the Electronic Check Council.

It is Epson's general position that the consumer public is at this time fairly well educated and familiar with the process of Electronic Check Conversion. One only has to look at the current (NACHA) published transaction volumes for both the ARC and POP transactions to recognize that ECC is now a mainstream occurrence. Many communities now have nationwide and local

merchants engaging in ECC at the point of sale and have a well-informed population of check writers that understand what is going to happen to their check and to their checking account. Almost anyone that writes checks to pay credit card or other monthly bills is now experiencing how the ARC process works.

We understand that there has been some concern over the degree to which there have been ambiguous notices provided to consumers for the ARC transaction (Proposed Rule memo, Supplementary Information, page 3), but much of that ambiguity in notices will be cleared up once the provisions of these proposals take effect. Some ambiguity has been created as billers have been trying to gain for themselves the flexibility to process a paper check received as payment as either an ECC (ARC) transaction or to process it as a check if that check is later discovered to be ineligible for ECC. This situation is relieved with the adoption of these proposals. The “clear and conspicuous” requirement in the proposal should go a long way toward effectively informing uninitiated check writers what to expect so they can make informed decisions.

It is Epson’s observation that when consumers are informed as to the fact that their check is going to be processed by electronic means, they are still favorably inclined to go forward with the check transaction.

#### Comments on Specific Sections of the Proposal

##### 1. Section 205.3(b)(3) – Authorization of one-time EFT initiated using MICR encoding on a check.

Epson is commenting on a number of statements appearing in the Proposed Rule memo that deal with this section.

Merchant in the best position to provide notice to a consumer for the purpose of obtaining authorization of an ECC – Epson agrees with this principle and it has been our observation that retail merchants have made significant efforts to assure that their consumers are aware of the electronic nature of ECC transactions. Most have invested in consumer and employee awareness programs as part of their start-up process. Some merchants have used the Federal Reserve Board publication: “When Is Your Check Not A Check” or provided similar written information as a consumer bag-stuffer for a period of time prior to implementing the ECC service at individual store locations. Many have signage in place as well as having instituted the practice of obtaining the consumer’s written authorization for each EFT. Merchants have no interest in confusing or misleading their shoppers; they do have an interest in having an easily understood, cost-effective, and easily implemented check acceptance methodology.

Notice on “clear and conspicuous signage” at POS – Epson believes this would be an acceptable measure on the part of merchants to assure their consumers are well informed to authorize the initiation of an EFT using ECC (POP). This signage, along with information that can be provided to the consumer as part of their transaction documentation, should be an acceptable form of consumer notification.

Written Signed Notice – Epson believes the current NACHA POP requirement to obtain a “written signed” notice as authorization has been an obstacle to the adoption of the POP application by many large merchants. The requirement for a written signed authorization is a factor that negatively impacts transaction tender-time at the check out lane, a closely measured operational statistic at large retailers, and one that can skew the merchant’s return-on-investment (ROI) analysis when considering adopting ECC.

Epson is in favor of the standard becoming: “notice” plus “going forward” equals “authorization”. In the interest of promoting greater adoption and usage of the POP transaction, Epson (and we believe our retail-merchant customers) would like to see this proposal adopted as it reads in the proposal. “A consumer authorizes a one-time EFT if notice that the transaction will be processed as an EFT is provided to the consumer and the consumer goes forward with the transaction by providing a check to a merchant.”

When a consumer is in a merchant establishment and makes a retail purchase by presenting a check, there can be no question that the consumer has authorized the merchant to be paid from that consumer’s checking account. The only question is whether the consumer received adequate notice that the payment was going to be made by electronic means. Epson believes the conspicuous signage method to be an appropriate level of notice and authorization communication between the consumer wishing to purchase goods with a check and a merchant that is accepting the check as payment for goods sold. Compliance with the notice standard can be easily audited by inspecting the merchant’s in-store signage placement and the information provided to the consumer as part of the transaction documentation.

There will be no “notice” required for checks that are accepted at POS that may be subsequently truncated and processed as corporate-capture image-deposits under the authority gained with Check 21. Also, the NACHA Electronic Check Council is now proposing a new E-check application, Back Office Conversion (BOC), whose proposed rule-characteristics are that a written signature will not be required when a check is accepted at the POS. Accordingly, Epson urges the Board to establish a common check acceptance rule for the POS, where a check writer who has presented a check as payment in a merchant POS environment, with appropriate notice, and “goes forward,” the check writer is deemed to have authorized the merchant to process their check and transfer funds from the consumer’s account to the merchant’s account, in any one of a number of ways, whether as paper or electronic at the discretion of the merchant. Epson recommends the Board adopt and promote this method as a standard for notification / authorization for POS check acceptance.

Epson points out that most contemporary POS systems (Epson’s and our competitors’) have the ability to easily add customized printed text to the consumer’s sales receipt and to add customized printed text on the customer’s check as well.

Here is an example of language Epson would propose for the merchant to print on the consumer’s sales receipt at the Point of Sale to confirm the notice and provide additional information to the consumer presenting and authorizing a check as payment:

In paying by check, you authorize us to collect the exact amount of the check from your checking account by processing it either as a paper check or as an

Electronic Funds Transfer. Your check may be processed as an image and deposited using authority created by the new federal law, Check 21.

Your original check has been returned to you. It is now VOID for any purpose other than paying for this transaction. DO NOT USE THIS CHECK AGAIN. This transaction will be debited from your checking account as quickly as in one day. You will find information about this transaction in your monthly bank statement.

Here is an example of language Epson would propose to overprint on the actual check at the Point of Sale before returning it to the consumer:

This check has been processed as an electronic transaction. It is now VOID for any purpose other than paying for this transaction. DO NOT USE THIS CHECK AGAIN.

This transaction will be debited from your checking account as quickly as in one day. You will find information about this transaction in your monthly bank statement.

Notice that checks will clear quickly – Epson believes this is useful information for a consumer to receive to better understand the nature of electronic check processing. This information can be easily incorporated into the communication provided in the conspicuous signage and included in the transaction documentation printed on the sales receipt.

NSF fees - Epson believes it is appropriate to consider the authorization created by presenting a check in payment as simultaneously authorizing the use of NSF fees when a check is returned unpaid. The notice of this prospect can be easily incorporated into the communication provided in the conspicuous signage and included in the transaction documentation printed on the sales receipt.

Model Clause Appendix A6 - Sample Notice about Electronic Check Conversion - Epson believes this clause is adequate to be used as the notice information placed in conspicuous signage at the point of sale and would provide sufficient information for a consumer to make an informed decision about paying with a check and authorizing the merchant to process the payment using the most efficient method:

(a) – Sample Notice About Electronic Check Conversion

When you provide a check, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process this transaction as a check. When we use your check to make an electronic fund transfer, funds may be withdrawn from your account quickly, as soon as the same day we receive your payment.

If there are insufficient funds in your account, you authorize us to charge a fee of \$\*\* and collect that amount through an electronic fund transfer from your account.

2. Section 205.3(b)(2)(2) –Authorization to process a transaction as an EFT or as a check.

EFT or a Check - The practical facts of merchant check acceptance do not permit the eventual check clearing and settlement method to be known at the moment the check is negotiated as a payment. An irrevocable, unilateral agreement to exclusively convert a check presented as payment is not workable and when merchants try to live by the letter of this present-day stipulation, it has caused a number of problems and confusion. As we migrate into the Check 21 era, retailers are going to want ECC and Check 21 to coexist, and they are going to need payment-method-flexibility such as that proposed.

Epson supports creating that flexibility by the use of clear and uniform notification language advising a check writer that their check may be processed by electronic or paper means and that it may take a number of routes on the way to accomplishing what the consumer's original check payment intended - the transfer of funds from the account of the check writer to the account of the merchant. The check writer's subsequent presenting of a check in payment should then be their "authorization" to use whatever lawful and established debit routing mechanism the retailer chooses to affect the funds transfer.

While there is nothing about Regulation E that specifically deals with check processing under Check 21, Epson believes that it would be wise on the part of merchants to disclose to consumers the possibility of using electronic means to process a check and inform them with the same notice that checks may clear quickly in order to reduce consumer confusion.

Consumer Harm – Epson doubts that a consumer can be interpreted to have been harmed in this context. Our understanding of the definition of "harm" with respect to the EFTA is a financial loss suffered by a consumer as a consequence of unauthorized access of the consumer's account either as a result of theft, fraud, error, or other misuse. It is understood that the Act and the Board's Regulations seek to protect consumers and limit their liability from these forms of harm.

However, there is no "harm" if a check writing consumer's intended and authorized check payment is processed one way versus another in route to completing and settling the transaction. Some have asserted that a reduction in available "float" should be interpreted as "harm," with the apparent hope that float will become a regulated consumer right. Since this is impossible on its face and since Check 21 will likely forever change the historical and traditional duration of float generally, this does not seem to be a sound argument.

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Epson appreciates the opportunity to comment on the Proposal. Should the Board wish, we would be available to clarify any comment we have made. Please feel free to contact Mike Helm, Director of Marketing, System Device Group, Epson America, Inc., at 3900 Kilroy Airport Way, MS 6-14, Long Beach, CA 90806, tel: (562) 290-5326, e-mail: Mike\_Helm@ea.epson.com.